



October 11, 2001

Ms. Leigh Gonnet
Staff Attorney
Legal and Compliance Division
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2001-4611

Dear Ms. Waitt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 153147.

The Texas Department of Insurance (the "department") received a request for specific filings from several insurance companies. Although you raise no exception on behalf of the department, you indicate that the request may implicate the proprietary rights of two third parties—Old American County Mutual Fire Insurance Company ("Old American") and Home State County Mutual Insurance Company ("Home State").¹ Consequently, you have notified both Old American and Home State of the request for their information pursuant to section 552.305 of the Government Code. In turn, both Old American and Home State have submitted arguments to this office contending that their requested information is excepted from disclosure under section 552.110 of the Government Code. We have considered all of the submitted arguments and reviewed the submitted information.

Section 552.110 of the Government Code protects the property interests of private persons by excepting from disclosure two types of information: (1) trade secrets obtained from a person and privileged or confidential by statute or judicial decision and (2) commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained. With respect to the commercial and financial information prong

¹Because you indicate that only the filings of Old American and Home State may be excepted from disclosure, we assume you have released any remaining information responsive to the request. To the extent you have not done so, you must do so now. See Gov't Code §§ 552.021, .301, .302.

of section 552.110, the exception requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would result from disclosure. Gov't Code § 552.110(b); *see* Open Records Decision No. 661 (1999).

Both Old American and Home State contend that their requested information is excepted from disclosure under the commercial and financial information prong of section 552.110. In support of this argument, they indicate that the release of the requested information would allow their competitors to review their methods of operation, revise their own methods accordingly, and develop a strategic plan to compete with Old American and Home State. Based on their arguments, we find that Old American and Home State have adequately demonstrated that release of their submitted filings would cause them substantial competitive harm. Therefore, you must withhold the submitted information under section 552.110(b).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

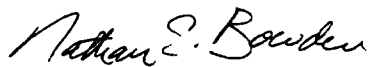
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dept. of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 153147

Enc: Submitted documents

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